IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5719 of 2007()

CRIME NO.12/06 OF PATHANAPURAM EXCISE RANGE, PUNALUR

: PETITIONERS/ACCUSED 1 AND 2:

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1. BABU, S/O. VALAYADAYAN,
RESIDING AT THAKAVILA VEEDU, KARAVUR MURI,
PERAVANTHURE VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

2. KUSHALAN @ RANNI, S/O. PONNAMMA,
AGED 28, RESIDING AT RENNALAYAM,THALAPANAMKULAM,
PERAVANTHURE VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.HARISH GOPINATH

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY EXCISE INSPECTOR, EXCISE RANGE
OFFICE, PATHANAPURAM, PUNALUR THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5719 of 2007

Dated this the 25th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under the Kerala Abkari Act. On receipt of information that contraband liquor/wash has been concealed within the compound of Kerala Forest Development Corporation, the excise officials reached the scene of the crime and found 650 litres of wash concealed there. Investigation revealed that it was the petitioners who had clandestinely kept the article there. Seizure was on 4.2.06. Investigation is in progress. In the occurrence report as well as the seizure mahazar, the names of the petitioners are shown as the persons responsible for the concealment of the contraband liquor are mentioned clearly. Investigation is not complete. Final report has not been filed so far. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. They are workers of the U.D.F and on account of political animosity, this false case has been initiated against them.

3. The learned counsel for the petitioners prays that the petitioners may be granted anticipatory bail in these circumstances. The learned Public Prosecutor opposes the application. The learned

Public Prosecutor submits that all available indications point satisfactorily to the complicity of the petitioners. There are absolutely no circumstances which justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This petition may, in these circumstances, be dismissed, it is prayed.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor . I am unable to find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners are not shown to be any such active functionaries of the U.D.F to justify the allegation that political animosity has prompted the powers to initiate such a false proceedings against the petitioners. This I am satisfied is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-